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March 7, 2011

VIA HAND DELIVERY

Ms. Cynthia Brown
Chief Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

ENTERED
Office of Proceedings

MAR 7 2011

Part of
Public Record

RE: *Demurrage Liability, STB Ex Parte No. 707*

Dear Ms. Brown:

Enclosed for filing in the above-referenced case are the original and ten (10) copies of BNSF Railway Company's Supplemental Comments. We have included one additional unbound copy to be uploaded onto the Board's webpage.

Please date stamp and return the extra copy of this letter to our messenger. If you have any questions, please feel free to contact me.

Sincerely,

Peter M. Lee
BNSF Railway Company

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

EX PARTE NO. 707

DEMURRAGE LIABILITY



**SUPPLEMENTAL COMMENTS OF
BNSF RAILWAY COMPANY**

BNSF Railway Company ("BNSF") herewith submits these comments to the Surface Transportation Board ("STB")'s Advance Notice of Proposed Rulemaking ("ANPR") in the proceeding designated Docket No. 707 — Demurrage Liability. The Board instituted these proceedings to address the issue of what party "should be liable for demurrage when goods are shipped to warehousemen, transloaders, or other 'intermediate' stops in the transportation chain before reaching their ultimate destination." The Association of American Railroads is simultaneously submitting comments to the Board in this proceeding on behalf of its member railroads that address the main issues raised in the ANPR. These supplemental comments by BNSF are intended to provide the Board with requested information regarding the BNSF's current practices regarding demurrage.

BNSF currently serves some 7,300 customers at about 8,500 origination and destination connection points. Typically, the entity that loads the freight at origin is the *consignor* as designated on the bill of lading and the entity that receives and unloads the freight at destination usually is the *consignee* and has or will become the beneficial owner of

the freight. With such party designations, the issue of a party's responsibility at law for demurrage liability simply does not arise on the majority of consignments. In fact, it has been BNSF's experience that well over 90% of the loaders and receivers of freight on BNSF will accept responsibility for demurrage at its facility.

BNSF's demurrage program serves an important role in promoting the efficient movement of railcars across BNSF's network to the benefit of the railroad and our customers alike. The success of any demurrage program requires that the shipper properly reflect the status of the entities involved in the transportation chain in the documents that it generates to initiate a rail shipment. A shipment on BNSF is customarily initiated by the creation of the bill of lading by a shipper through BNSF's website, another industry web interface or through Electronic Data Interchange ("EDI"). As derived from the electronic bill of lading, BNSF creates a waybill to effect transport of the subject shipment. Both the bill of lading and the waybill should contain information as to the shipper/consignor, the ship-by-party (agent), the consignee, the in-care-of-party (agent), and the payor of freight, and the identity of the entities will often overlap for a single shipment. BNSF relies on its shipping customers to properly identify the status of the entities involved in the transportation chain and designate them in the bill of lading for each shipment.

Through the technology of BNSF's website tools, the entities designated by a shipper on the bill of lading have the ability to access advanced information relating to their shipments. In recent years, BNSF has invested significant time and resources to enhancing the way our customers can interface with us on demurrage and storage issues by empowering

customers to access shipment information through our BNSF online tools, and providing expanded customer support options and proactive educational opportunities. Shippers and other entities involved in the chain of transportation can access in real time information on an individual shipment as it travels from origin to destination including the information contained in the waybill, and can register to regularly receive customized reports and notifications such as Custom Traces.

On an individual shipment, the party performing the physical loading (usually the ship-by-party) receives notice of the tender/placement of the railcar for loading and will be billed for origin demurrage, and the party performing unloading (usually the care-of-party) similarly receives notice of the tender/placement of the car for unloading and will be billed for destination demurrage. That notice is typically made through an electronic communication. It is then understood between the carrier and the loader/unloader that if the loader/unloader does not wish to accept financial responsibility for origin/destination demurrage, it will so notify BNSF and inform BNSF of the party to be so responsible. Accordingly, the unloader, including any warehouseman handling a shipment on behalf of another party, has the early opportunity to accept or to decline responsibility for subsequently accrued demurrage. Absent such notification of declination, BNSF will assess origin/destination demurrage against that loader/unloader on the assumption that the loader/unloader is the consignor/consignee on the consignment (or has consented to accept demurrage responsibility thereon) , and thus is financially responsible for any such charge incurred. On the overwhelming majority of BNSF consignments which involve a non-beneficial owner loader or unloader, the warehouse, transloader, transit facility, etc., will accept responsibility for demurrage incurred on the

shipments that it receives from BNSF.

CONCLUSION:

BNSF respectfully submits to the STB that the Third Circuit Novolog decision is correct.

Based on the authority of 49 U.S.C. § 10743(a)(1), unless the consignee, as designated on the bill of lading, has informed the delivering carrier prior to delivery "that it is an agent only, not having beneficial title to the property" and advises "of the name and address of the beneficial owner of the property," then that consignee is and should be responsible for destination demurrage incurred on that consignment.

Respectfully submitted,

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Peter M. Lee
Jill K. Mulligan

By:


Peter M. Lee

Attorneys for BNSF Railway Company

Date: March 7, 2011